

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOE LESLEY LUCKETT,

Defendant-Appellant.

UNPUBLISHED

June 18, 1999

No. 208195

Washtenaw Circuit Court

LC No. 96006810 FC

Before: Fitzgerald, P.J., and Doctoroff and White, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of first-degree criminal sexual conduct, MCL 750.520b(1)(f); MSA 28.788(2)(1)(f), and was sentenced to six to fifteen years' imprisonment for each conviction. We affirm in part and remand for transcription of the jury voir dire.

Defendant first argues that the trial court improperly admitted the prior consistent statements of the complainant through the testimony of Mary Johnson for the purpose of rebutting a charge of recent fabrication, MRE 801(d)(1)(B), because the statements were not made before the existence of any fact that would motivate bias, interest, or corruption. We need not determine the propriety of the trial court's decision to admit the testimony because any error in its admission was harmless. *People v Rodriquez (On Remand)*, 216 Mich App 329, 331; 549 NW2d 359 (1996). The complainant's prior statements were also admitted through the testimony of other witnesses whose testimony, which was consistent with that of Mary Johnson, has not been challenged. Hence, it is unlikely the outcome would have been different had Mary Johnson's testimony regarding the prior consistent statements been excluded. MCL 769.26; MSA 28.1096.

Defendant next contends that the trial court abused its discretion by denying defendant's motion for a new trial based on newly discovered evidence in the form of affidavits of two persons who knew the victim. One affiant stated that the victim had extorted money for an abortion from a married man by falsely informing him that she was pregnant. Another affiant, who was incarcerated and serving a sixteen to forty year sentence for delivery of a controlled substance as an habitual offender, stated that the victim threatened to falsely accuse him of rape if he did not pay her \$396. The trial court held that the newly discovered evidence was ancillary to the central issue and its primary effect would be to impeach

the victim. Newly discovered evidence is not grounds for a new trial where it would be used merely for impeachment purposes. *People v Bradshaw*, 165 Mich App 562, 567; 419 NW2d 33 (1988).

The trial court also held that the evidence, even if admissible, was unlikely to produce a different result on trial in light of the suspect credibility of the affiants. After a review of the record, we agree. Consequently, we conclude that the trial court did not abuse its discretion in denying defendant's motion for a new trial. *People v Miller (After Remand)*, 211 Mich App 30, 47; 535 NW2d 518 (1995).

Next, defendant asserts that the trial court erred by not allowing the victim's memory to be refreshed under MRE 612 with a report prepared by a detective, thus denying defendant his right of cross-examination. Under the circumstances of this case, we disagree. It is clear from defense counsel's line of questioning that defendant was attempting to impeach the victim by comparing her direct testimony to statements she previously made to the police. However, "the purpose of refreshing is to awaken the memory, not to impeach or contradict the witness." *People v Thomas*, 359 Mich 251, 262; 102 NW2d 475 (1960). Further, a review of the record establishes that defendant was successful in impeaching many of the inconsistencies regarding the victim's testimony and continually impeached the victim with her prior inconsistent statements.

Last, defendant argues, and the prosecution concedes, that defendant is entitled to a copy of the voir dire transcript. Hence, we remand this matter to the circuit court for transcription of the jury voir dire. *People v Neal*, 459 Mich 72; 586 NW2d 716 (1998).

Affirmed in part and remanded for the limited purpose of transcription of the jury voir dire. This Court does not retain jurisdiction.

/s/ E. Thomas Fitzgerald

/s/ Martin M. Doctoroff

/s/ Helene N. White